

Message Text

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PAGE 01 STATE 063777
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TO AMEMBASSY PANAMA IMMEDIATE

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SUBJECT: DRAFT IMPLEMENTING LEGISLATION; SPECIAL IMMIGRATION PROVISION

REFS: (A) PANAMA 08301; (B) PANAMA 01552, (C) JORDEN-HANSELL MARCH 9 TELECON

FOR AMBASSADOR JORDEN, FROM HANSELL

1. BEFORE ANY FURTHER ACTION BY THE DEPARTMENT AND PURSUANT TO OUR PHONE CONVERSATION THURSDAY MORNING, THIS CABLE DESCRIBES THE TENTATIVE UNDERSTANDING REACHED LAST

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PAGE 02 STATE 063777

FRIDAY BETWEEN STATE AND ARMY ON THE ISSUE OF SPECIAL IMMIGRATION PROVISIONS FOR NON-U.S. CITIZEN EMPLOYEES IN THE CANAL ZONE.

2. THE UNDERSTANDING IS AS FOLLOWS:

A) A NEW PROVISION (SECTION 410 OF THE DRAFT LEGISLATION)

WOULD BE ADDED TO EXISTING LAW EXTENDING SPECIAL IMMIGRANT STATUS TO NON-U.S. CITIZEN EMPLOYEES OF THE CANAL ZONE GOVERNMENT AND CANAL COMPANY AND THEIR DEPENDENTS WHO RESIDE IN THE CANAL ZONE AND HAVE PERFORMED FAITHFUL SERVICE FOR ONE YEAR OR MORE.

B) EMPLOYEES WHO ARE RETIRED OR WHO HAVE 15 YEARS OR MORE FAITHFUL SERVICE AND WHO ARE NOT COVERED BY DRAFT SECTION 410 WOULD BE ELIGIBLE UNDER EXISTING LAW (8 U.S.C. 1101(A)(27)(E)) WHICH REQUIRES: (1) A RECOMMENDATION AND A DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES IS MADE BY THE AMBASSADOR, AND (2) THE SECRETARY OF STATE APPROVES SUCH RECOMMENDATION AND FINDS THAT IT IS IN THE NATIONAL INTEREST.

C) AT SECRETARY ALEXANDER'S STRONG INSISTENCE THAT THERE BE SOME ASSURANCE THAT THE DISCRETIONARY PROVISION DESCRIBED IN (B) ABOVE WOULD IN FACT BE USED FOR THE BENEFIT OF NON-U.S. CITIZEN EMPLOYEES, THE DEPARTMENT WOULD CONFIRM ITS INTENTION TO CONSIDER FAVORABLY UNDER THE EXISTING LAW APPLICATIONS FROM THE FOLLOWING PERSONS: (1) HONORABLY RETIRED EMPLOYEES WITH 15 YEARS OR MORE SERVICE WHO ARE INVOLUNTARILY SEPARATED AS A RESULT OF TREATY IMPLEMENTATION.

D) THE CRITERIA OF (C) ABOVE WOULD APPLY ONLY TO PERSONS
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PAGE 03 STATE 063777

EMPLOYED BY U.S. GOVERNMENT AGENCIES IN THE CANAL ZONE AND NOT TO OTHER UNITED STATES GOVERNMENT EMPLOYEES IN PANAMA.

3. THIS UNDERSTANDING RESULTED FROM PROTRACTED NEGOTIATIONS BETWEEN STATE AND ARMY. THE OCTOBER 20, 1977, DRAFT OF THE LEGISLATION CONTAINED A PROVISION WHICH WOULD HAVE ADMITTED ALL EMPLOYEES WITH 20 YEARS OR MORE SERVICE, AND ALL EMPLOYEES WHOSE WELFARE WAS SUBSTANTIALLY AND ADVERSELY AFFECTED BY USG EMPLOYMENT. EMBASSY OPPOSED THIS APPROACH (REFTEL A) ON GROUNDS THAT THE NUMBER ELIGIBLE WAS TOO LARGE AND THAT THE "ADVERSELY AFFECTED" CRITERION WAS POLITICALLY DAMAGING AND WOULD BE DIFFICULT TO APPLY ON A CASE-BY-CASE BASIS. DEPARTMENT THEN INITIATED DISCUSSIONS WITH ARMY TO ARRIVE AT A SOLUTION WHICH:

A) PROTECTED THOSE PRIMARILY AFFECTED, I.E., ZONE RESIDENTS,

B) LIMITED ELIGIBILITY OF NON-ZONE RESIDENTS, PARTICULARLY PRESENT EMPLOYEES, SO AS TO AVOID A "MANPOWER

DRAIN",

(C) AVOIDED THE "ADVERSE EFFECT" TEST TO WHICH EMBASSY
OBJECTED, AND

D) CHANGED THE EXISTING STATUTE AS LITTLE AS POSSIBLE SO
AS TO AVOID CREATING A PRECEDENT.

4. UNDERSTANDING ULTIMATELY REACHED WITH ARMY INVOLVES A
NARROW CHANGE TO EXISTING LAW AND ELIMINATES "ADVERSE
EFFECT" TEST. OUR ESTIMATE OF NUMBER OF PERSONS ELIGIBLE
UNDER PROPOSED APPROACH IS: 1000 ZONE RESIDENTS EMPLOYED
BY THE CANAL COMPANY/GOVERNMENT AND 8,750 RETIRED AND
7000 PRESENT EMPLOYEES OF THE CANAL COMPANY/GOVERNMENT
AND DOD WITH 15 YEARS OR MORE SERVICE. PRESENT EMPLOYEES
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PAGE 04 STATE 063777

ARE ELIGIBLE ONLY IF THEY ARE INVOLUNTARILY SEPARATED AS
A RESULT OF TREATY IMPLEMENTATION. IT IS ESTIMATED THAT
1800 EMPLOYEES IN THIS GROUP WILL BE SEPARATED, BRINGING
THE TOTAL ELIGIBLE TO 11,550 (1000 PLUS 8750 PLUS 1800),
EXCLUSIVE OF DEPENDENTS. THIS FIGURE DOES NOT INCLUDE
THE SMALL NUMBER OF PERSONS EMPLOYED BY OR RETIRED
FROM OTHER FEDERAL AGENCIES IN THE CANAL ZONE. OVER 75
PER CENT OF THOSE ELIGIBLE WOULD BE RETIREES, THUS LIMITING
THE DRAIN ON ACTIVE MANPOWER.

5. SINCE DRAFT LEGISLATION IS NOW PUBLIC AND REFLECTS ONLY
PART OF AGREEMENT REACHED BETWEEN ARMY AND STATE, AND
DETAILS OF PROPOSED STATE-ARMY LETTER HAD NOT BEEN FORMAL-
IZED, IT WAS AGREED CANAL COMPANY COULD DISTRIBUTE BRIEF
GENERAL STATEMENT EXPLAINING PORTIONS OF AGREEMENT NOT
REFLECTED IN LEGISLATION. WHEN DEPARTMENT BECAME AWARE
OF YOUR OBJECTIONS, IT REQUESTED THAT STATEMENT NOT BE
DISTRIBUTED AND CANAL COMPANY HAS COMPLIED WITH THIS
REQUEST. IF WE ARE UNABLE TO CONFIRM SUBSTANCE OF AGREE-
MENT AT THIS TIME, WE MIGHT SUGGEST THAT THE CANAL COMPANY
ISSUE A GENERAL STATEMENT INDICATING THAT THE DRAFT LEGIS-
LATION CONTAINS ONLY A PART OF THE SPECIAL IMMIGRATION
PROPOSAL, AND THAT OTHER ARRANGEMENTS ARE BEING DISCUSSED.
WE WOULD NOT DO SO, OF COURSE, UNTIL WE HAVE YOUR COMMENTS,
AND WILL TRY TO POST-PONE ANY ACTION UNTIL AFTER THURSDAY.

6. REGARDING QUESTION POSED IN REFTEL B, PARAGRAPH 5,
EFFECT OF PROPOSED STATE LETTER TO ARMY WOULD BE TO EX-
PRESS GENERAL INTENTION TO CONSIDER FAVORABLY, BOTH AT
AMBASSADORIAL AND SECRETARIAL LEVEL, APPLICATIONS FROM
PERSONS WITHIN CLASS DESCRIBED. STATUTORY DISCRETION TO
DENY SUCH APPLICATIONS IN A PARTICULAR CASE WOULD NOT BE
FORECLOSED.

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PAGE 05 STATE 063777

7. AS DISCUSSED IN PHONECON, WE HOPE TO DEFER ANY FURTHER CONVERSATIONS WITH ARMY ON THIS SUBJECT UNTIL AFTER THURSDAY. WE WILL KEEP YOU FULLY POSTED ON FURTHER DEVELOPMENTS. VANCE

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